

# EXHIBIT 4

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

---

MICROSOFT CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. C10-1823JLR
	)	
MOTOROLA, INC., et al.,	)	SEATTLE, WASHINGTON
	)	May 7, 2013
Defendants.	)	
	)	TELEPHONE CONFERENCE
	)	
MOTOROLA MOBILITY, LLC, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	
	)	

---

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

---

APPEARANCES:

For the Plaintiff: ARTHUR HARRIGAN  
CHRISTOPHER WION  
SHANE CRAMER  
DAVID PRITIKIN  
ANDY CULBERT

For the Defendants: RALPH PALUMBO  
PHILIP McCUNE  
BRIAN CANNON  
ANDREA ROBERTS

Reported by: NANCY L. BAUER, CCR, RPR  
(206) 370-8506  
nancy\_bauer@wawd.uscourts.gov

1           So, in effect, this is somewhat like a motion in limine,  
2           although it really is more in the order of a disguise motion  
3           for summary judgment.

4           I've had a chance to go back and look at this, and let me  
5           give you my chronology, and then I have one question for both  
6           sides, and it's my intention to rule today.

7           Mr. Palumbo, in his letter, describes whatever was done by  
8           Microsoft on February 7, 2011, as initial disclosures. That  
9           is a term of art under the civil rules, and it is, perhaps,  
10          the most general lay-down disclosure I've ever seen, in that  
11          it says, "Microsoft claims its damages," and later it says,  
12          "All damages available under the law." And by way of further  
13          clarification says, "Suffered as a result of defending  
14          against Motorola's action in the district court for the  
15          Western District of Wisconsin and before the ITC."

16          That seems to me to address or go to one of the items of  
17          damage that's claimed by Microsoft in its subsequent more  
18          detailed disclosures.

19          On May 7th, 2012, and I actually have a recollection of  
20          this, Mr. Harrigan was passionately arguing to the court and  
21          announced that one of the Microsoft's items of damage was the  
22          costs associated with its move of its distribution center to  
23          the Netherlands. That was a new fact to the court at the  
24          time.

25          I do not have as detailed recollection of the July 9,

1 Once again, that comes outside the material that the court  
2 would be aware of.

3 And apparently on April 3rd, 2013, Microsoft served  
4 supplemental interrogatory answers, which would confirm the  
5 fact that there had been prior discovery served.

6 In that there are four items of claimed damage. First --  
7 and I'm taking this from one of the letters -- it's  
8 attorneys' fees, Microsoft's attorneys' fees defending, and I  
9 underline the word "defending," Motorola's claims in the ITC,  
10 the U.S. district court in Germany. And since it seems to me  
11 there is a difference in attorneys' fees defending and  
12 attorneys' fees in prosecuting, I assume that the word was  
13 chosen intentionally.

14 Motorola, for its part, does not seek to exclude that as  
15 an item of damage in the upcoming trial, and therefore it  
16 seems to me that one is in there.

17 I would think that as part of either your motions in  
18 limine or your dispositive motions, someone will flesh out  
19 legal basis for that claim. Right now I guess I can create  
20 one in my mind, but that's not an area of damages law that I  
21 know off the top of my head, and it would be helpful to  
22 understand your basis for it.

23 The second is the relocation from Germany to the  
24 Netherlands, and I hold that that has previously been  
25 disclosed, and therefore is legitimately part of the damages

1 that will be pursued in the upcoming trial.

2 The third item of damage is Motorola's refusal to grant  
3 Marvell a license, which I do not find having been raised  
4 anywhere, and it certainly has not been raised to the court.  
5 Microsoft does not respond to that, which, under the local  
6 rules, is deemed to be a concession of its correctness, and  
7 therefore I am tentatively striking that as an item of  
8 damage.

9 And then the fourth, Motorola's refusal to grant Microsoft  
10 a license under Google's MPEG LA license. Once again,  
11 Motorola has brought that on as a motion to exclude.  
12 Microsoft has not responded. In fact, there's no further  
13 discussion of either of those, the Marvell license or the  
14 MPEG LA license, and therefore I'm excluding it.

15 The trial in this matter remains as fixed in the March  
16 2013 minute order. I guess all I can say is welcome to the  
17 party. The time and the date is set, and it's not going to  
18 get moved on the basis of some trumped-up stuff, and that  
19 trial will go forward on issues No. 1 and 2, namely  
20 attorneys' fees and the relocation.

21 At the very end of Mr. Palumbo's letter, there is a wish  
22 list of items that Motorola would like, and that includes ten  
23 requests for production of documents, three interrogatories,  
24 50 requests for admissions, two additional depositions, and a  
25 partridge in a pear tree. They're not going to get very much

1 of that. I see no reason to allow requests for production of  
2 documents when there's already been documents produced. If  
3 you have not explored among yourselves areas where you  
4 believe documents need to be produced, or you think documents  
5 are being withheld, bring that matter on to the court.

6 The question I'm going to ask the parties at the end of  
7 this is, why do you need interrogatories? As to the 50  
8 requests for admissions, the answer is no. I'm going to  
9 authorize two additional depositions so that you now have  
10 eight total. Originally two were going to be on liability  
11 and four were going to be on damages. And I'm not going to  
12 allocate the two additional ones, but my assumption is, if  
13 you're telling me the truth, those will probably be going to  
14 damages.

15 And if you need some additional time to get your discovery  
16 done before the cutoff date set by the court, I'm happy to  
17 hear that, as I'm now at the end of my prepared remarks. So  
18 Mr. Palumbo on behalf of Motorola?

19 MR. CANNON: Good afternoon, Your Honor. This is  
20 Brian Cannon for Motorola. I think the two additional,  
21 you're correct, will go to damages, at least on the Motorola  
22 side.

23 The wish list request, I think, was primarily directed to  
24 the moving of the Germany facilities. Your Honor is  
25 absolutely correct about Microsoft potential damages theory

1 last year.

2 The issue from our end, or the reason we brought the  
3 motion was that we actually thought the computation related  
4 to that were not produced until this year. However, Your  
5 Honor ruled, and I have nothing further to say on that.

6 The interrogatory I had in mind was having to do with  
7 moving the facility and asking Microsoft for its business  
8 reasons in addition to what it alleges its damages theory is  
9 as to why the facility moved. But I think with the  
10 additional deposition, we should be able to cover that  
11 ground.

12 THE COURT: Great. Thank you. Mr. Harrigan?

13 MR. HARRIGAN: Yes, Your Honor. I think the only  
14 items that I would like to briefly address are the Marvell  
15 and Google items, and to clarify that, there is no separate  
16 damages claim for either one of those items -- either one of  
17 those alleged breaches.

18 We were responding or supplementing by identifying those  
19 as elements of our breach claim, and in the April -- and we  
20 did refer to the April 3rd -- the supplemental disclosure in  
21 our letter, and what that says is, with respect to, for  
22 example, Google, Motorola failed to make a license available  
23 on those terms. If the license had been available, Microsoft  
24 would not have incurred any further damage by virtue of -- by  
25 failure of Motorola to make available a license on RAND terms

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 12th day of May 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter